

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF THE STATE OF WASHINGTON**

In re MARIANNE S. JOHNSTON

Debtor,

Address: 35521 227th Avenue NE
Auburn, WA 98092

Last four digits of Social-Security or
Individual Tax-Payer Identification (ITIN)
No(s)., (if any): xxx-xx-0034

DANIEL GRAVES, M.D. and
MARANATHA MEDICAL CLINIC, INC.,
a Washington Corporation.

Plaintiffs/Creditors,

v.

MARIANNE JOHNSTON,

Defendant/Debtor.

No. 20-12865-TWD

CHAPTER 7

PLAINTIFFS DANIEL L. GRAVES
AND MARANATHA MEDICAL
CLINIC, INC.'S ADVERSARY
COMPLAINT AND OBJECTION TO
DISCHARGE UNDER 11 U.S.C.
523(A)(2)(A), 11 U.S.C. 523(A)(4)
AND 11 U.S.C. 523(A)(6)

Adversary No. _____

1 **COMPLAINT**

2 Creditor Daniel L. Graves, M.D. and Maranatha Medical Clinic, Inc. (collectively
3 “Plaintiff”) brings this action against debtor defendant Marianne S. Johnston, as follows:

4 **I. PARTIES**

5 1. Daniel L. Graves, M.D. (“Graves” or “Plaintiff”), plaintiff, is, and at all
6 material times was, a resident of King County, Washington.

7 2. Maranatha Medical Clinic, Inc. (“Maranatha” or “Plaintiff”), plaintiff, is a
8 Washington corporation with its principal place of business in King County, Washington.

9 3. For convenient reference, Graves and Maranatha will be collectively referred to
10 as “Plaintiff.”

11 4. Upon information and belief, defendant debtor Marianne Johnston, PA-C
12 (“Johnston”) is a resident of King County, Washington.

13 **II. JURISDICTION**

14 5. Plaintiff files this complaint seeking relief and objecting to Johnston’s discharge
15 of money owed to Plaintiff under 11 U.S.C. 523(a)(2)(A), 11 U.S.C. 523(a)(4) and under 11
16 U.S.C. 523(a)(6).

17 **III. FACTS**

18 6. Graves is a medical doctor and operates his medical practice through
19 Maranatha.

20 7. Regence BlueShield of Washington (“Regence”) is a Washington corporation
21 with its principal place of business in King County, Washington. Upon information and
22 belief, Regence provides health insurance to its insureds. Regence is a “health carrier” as
23

1 defined under RCW 48.43.005 and is subject to the requirements of RCW 48.43.055 and
2 WAC 284-170-440.

3 8. Cambia Health Solutions, Inc. (“Cambia”) is an Oregon corporation and does
4 business in King County, Washington. Cambia Health Solutions is the parent company of
5 Regence BlueCross Blue Shield plans in Idaho, Oregon, Utah & Washington. Upon
6 information and belief, Cambia is a relevant successor in interest to Regence or acts as
7 Regence’s agent for purposes of administering Regence’s provider agreements including
8 paying providers for services rendered on behalf of Regence insureds. Upon information and
9 belief, Cambia provides health insurance to its insureds and/or administers billings and
10 payments on behalf of other health insurers.

11 9. On or about July 2, 2003, Plaintiff and Regence entered into a contract whereby
12 Regence agreed to pay Plaintiff for medical services provided to Regence’s insureds
13 (“Contract”).

14 10. Up until 2013, Regence mailed checks directly to Plaintiff. At some point in
15 2012, Cambia began issuing payments on behalf of Regence.

16 11. On or about January 2, 2013, Regence apparently received an Automatic
17 Deposit Authorization Agreement (Electronic Funds Transfer agreement) (“EFT”) from
18 defendant debtor Marianne Johnston (“Johnston”) dated December 27, 2012. Johnston
19 worked in Plaintiff’s office. The EFT form apparently shows what appears to be her Tax ID
20 (it is redacted), her title of PA-C, and her Boeing Employees Credit Union (BECU) checking
21 account details. She also attached a voided check that lists her name and title (PA-C). She
22 listed Accelerated Claims as her EFT contact and provided lsimokat@comcast.net as the
23 company email address.

1 12. Plaintiff submitted claims for payment to Regence/Cambia for the services
2 provided by Plaintiff to patients who were Regence/Cambia insureds.

3 13. Based on the EFT submitted by Johnston, Regence/Cambia began to pay money
4 owed to Plaintiff, to Johnston, by depositing the money owed to Plaintiff into Johnston's
5 personal BECU account.

6 14. Plaintiff never authorized Johnston to redirect the money owed by
7 Regence/Cambia to Plaintiff to herself instead.

8 15. Plaintiff never authorized Regence or Cambia to pay money, owed to him, to
9 Johnston. In fact, Plaintiff had no idea whatsoever that this EFT process had been
10 undertaken. He had no involvement with the process.

11 16. Regence and Cambia breached their contract with Plaintiff by failing to pay
12 Plaintiff and paying Johnston instead.

13 17. Upon information and belief, Regence/Cambia had no adequate procedures to
14 ensure the EFT process resulted in payments going to the correct payee, in this case,
15 Plaintiff. Or, upon information and belief, Regence/Cambia failed to follow their own
16 procedures relating to ensuring Regence/Cambia paid the correct payee, in this case,
17 Plaintiff. This enabled Johnston to steal from Plaintiff.

18 18. From in or about 2013 to 2018, instead of paying money due to Plaintiff,
19 Regence/Cambia paid the money directly to Johnston by directly depositing the money into
20 Johnston's BECU account. Upon information and belief, Regence/Cambia paid the
21 following money to Johnston that was owed to Plaintiff:

22 2013	\$86,427.96
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2014	\$80,118.07
2015	\$85,210.23
2016	\$89,657.91
2017	\$91,165.31
2018	\$83,067.40
TOTAL	\$515,646.88

19. Johnston wrongfully kept the money she received from Regence/Cambia that was due to Plaintiff.

20. Despite approximately doubling her income for approximately six years, and knowing she was receiving ill-gotten gains, Johnston continued to secretly keep the ill-gotten money.

21. Plaintiff filed a lawsuit against Johnston, Regence and Cambia in the King County Superior Court, *Daniel Graves, M.D. and Maranatha Medical Clinic, Inc. v. Regence Blueshield, Cambia Health Solutions, Inc., and Marianne Johnston, PA-C and Stephen Johnston*, Case No. 20-2-11741-2 KNT “State Court Action.” A copy of the complaint is attached as Exhibit 1.

IV. OBJECTIONS TO DISCHARGE

22. Johnston’s debt is not dischargeable under 11 U.S.C. 523(a)(2)(A) because the money was obtained by false pretenses, a false representation, or actual fraud.

23. Johnston's debt is not dischargeable under 11 U.S.C. 523(a)(4) because the debt arose from fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

24. Johnston's debt is not dischargeable under 11 U.S.C. 523(a)(6) because the debt arose from willful and malicious injury by the debtor to another entity or to the property of another entity.

25. Plaintiff requests an order from the Court disallowing a discharge relating to the Johnston's ill-gotten gains that are owed to Plaintiff.

26. Plaintiff also requests a relief from stay so that Plaintiff may continue to pursue the State Court Action against Johnston, Regence and Cambia in an efficient manner in one proceeding.

V. PRAYER FOR RELIEF

Plaintiff respectfully ask the Court for relief as follows:

(1) To except from discharge Johnston's debt owed to Graves.

(2) To lift the automatic stay so that Plaintiff may continue to pursue the State Court Action against Johnston, Regence and Cambia in an efficient manner in one proceeding.

(3) In the alternative, for judgment against Plaintiff in the amount of her ill-gotten gains plus interest.

(4) In the alternative, a constructive trust as to money wrongfully received by Johnston that was due to Plaintiff as well as to all personal and real property acquired with the money and the transfer of such money and property to Plaintiff.

1 (3) In the alternative, for all prejudgment and post judgment interest as allowed by
2 law.

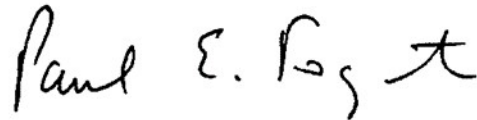
3 (4) All reasonable costs of court.

4 (5) Attorneys' fees and costs to the extent allowed by law.

5 (6) Any other relief the court deems just and equitable.

6 DATED this 12th day of February, 2021.

7 FOGARTY LAW GROUP PLLC

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